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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
GAIL CHAPMAN BLOXSOM,) No. 99-31450SCDM
Debtor.) Chapter 7
_____)

MEMORANDUM DECISION

INTRODUCTION

In this matter the court determines that when a trustee sells property that is jointly owned by a debtor and a co-tenant, the co-tenant's share of the sale price may be considered "money disbursed or turned over by the trustee" such that it can be included in the trustee's maximum compensation base under 11 U.S.C. § 326(a).¹

FACTS

E. Lynn Schoenmann ("Trustee") is the trustee in this Chapter 7 case. The administration of Debtor's estate resulted in payment of all claims and administrative expenses in full, with interest, and a return of a substantial surplus to Debtor (in addition to

¹Unless otherwise indicated, all section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 her homestead exemption). (Trustee's Supplemental Brief to
2 Trustee's Final Report and Application for Final Compensation
3 ("Supp. Brief"), p. 2). Debtor's sole asset was her residence
4 (the "Residence"), which was unencumbered, but held in co-tenancy
5 with Debtor's brother, Craig Chapman ("Co-owner"). (Trustee's
6 Final Report and Application for Compensation ("Final Rpt."), p.
7 1). Trustee entered into an agreement with Co-owner whereby
8 Trustee would list, market and sell the Residence, execute all
9 closing documents, pay all closing costs, taxes and other
10 expenses, and distribute 50% of the remaining net proceeds to the
11 Co-owner. (Supp. Brief, p. 2). The "Order Authorizing and
12 Approving Sale of Real Property, Disbursement of Sales Proceeds,
13 and Compromise of Controversy" ("Order") stated that "The Trustee
14 through the First American Title Company is authorized to pay to
15 Craig Kimball Chapman fifty percent of the net sales proceeds of
16 the [Residence] directly from the escrow account without further
17 order of the court." (Order, p. 3).

18 Trustee performed a site inspection and marketed the
19 Residence for sale. (Final Rpt., p. 2). Trustee presided over
20 the bidding by two competing buyers, and the Residence was
21 ultimately sold to the successful bidder for \$600,000. (Final
22 Rpt., p. 2). Trustee proceeded to close the sale by working with
23 the title company and helping to execute all closing documents.
24 (Final Rept., p. 2). Co-owner was then given his 50% share of the
25 net proceeds from the sale, which amounted to \$279,508.59.
26 Trustee now requests \$24,526.77 as her final compensation. That
27 amount is the maximum compensation payable pursuant to section
28 326(a), and is calculated by using \$425,535.42 as the total amount

distributed by Trustee.² The court has been asked by Trustee to approve her fee request, and neither the creditors, Debtor, nor the U.S. Trustee has taken a position in this matter.³

ANALYSIS

Section 326(a) provides:

In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$ 5,000 or less, 10 percent on any amount in excess of \$ 5,000 but not in excess of \$ 50,000, 5 percent on any amount in excess of \$ 50,000 but not in excess of \$ 1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$ 1,000,000, *upon all moneys disbursed or turned over in the case by the trustee to parties in interest*, excluding the debtor, but including holders of secured claims. (Emphasis added).⁴

²The total is computed by adding the sums disbursed to creditors (\$146,026.83) to the amount paid to the Co-owner (\$279,508.59), for a total of \$425,535.42.

³Trustee states that as she "understood the court's remarks, the court is satisfied that the full amount of \$24,526.77 constitutes reasonable compensation under section 330" (Supp. Brief p. 3). Therefore, this analysis does not address the reasonableness of the fee under section 330. Section 326(a) establishes maximum fees which may be awarded to a trustee for services but creates no entitlement to commission in that amount. See In re Roco Corp., 64 B.R. 499, 502 (D. R.I. 1986). If the court finds that the maximum fee is unreasonably high based on the amount of work Trustee performed, a lesser amount can and should be awarded. No adjustment will be made here.

⁴The phrase "party in interest" is used in forty-six (46) different sections of the Bankruptcy Code, but it is not actually defined therein. In re Citi-Toledo Partners II, 254 B.R. 155, 162-63 (Bankr. N.D. Ohio 2000). Several courts have indicated that the term "party in interest" is expandable, and should be evaluated on a case-by-case basis. In re Chandler Airpark Joint Venture I, 163 B.R. 566, 569 (Bankr. D. Ariz. 1992); In re Rook Broadcasting of Idaho, Inc., 154 B.R. 970, 972 (Bankr. D. Idaho 1992); In re Zaleha, 162 B.R. 309, 313 (Bankr. D. Idaho 1993); In re River Bend-Oxford Assocs., 114 B.R. 111, 113 (Bankr. D. Md. 1990). In In re North American Oil & Gas, Inc., 130 B.R. 473, 479 (Bankr. W.D. Tex. 1990) the bankruptcy court stated, "Party in interest, in the context of Section 326(a), should . . . include

1 The phrase "distributed or turned over" is not defined in
2 Section 326(a), and it is susceptible to multiple interpretations.
3 Trustee argues that Co-owner's share of the net sale proceeds does
4 constitute money distributed by the Trustee under the reasoning
5 set forth in the case of In re Schautz, 390 F.2d 797 (2d Cir.
6 1968). In Schautz, the joint tenant of a debtor consented to the
7 sale of property co-owned by her and the debtor. Id. at 797. The
8 joint tenant gave a quitclaim deed for her interest in the
9 property to the bankruptcy trustee, and the trustee sold the
10 property to a third party free and clear of liens. Id. at 797.
11 After the sale, "the Trustee apparently deposited the proceeds to
12 his account as trustee, and paid all the mortgages, liens, and the
13 [joint tenant's] share from his account." Id.

14 The court of appeals held that the trustee could include the
15 joint tenant's interest in the property in calculating the maximum
16 fee of the trustee. Id. at 799. The court stated:

17 "If the money comes lawfully into the hands of the trustee,
18 as such, and if he in the performance of his duty as such is
19 required to protect, preserve, and care for it, and
20 eventually disburse it pursuant to the order of the court,
21 and does so, there is no reason why he should not have his
22 commissions, if the court allows them, even if the funds are
23 subject to a lien which in law and equity the court is
24 required to recognize and enforce."

25 Id., quoting In re Cramond, 145 F. 966, 972 (N.D.N.Y. 1906).

26 _____
27 an entity to whom distribution of estate assets is legitimately
28 made in furtherance of the overall distribution process
contemplated in bankruptcy[.]"

29 Here, Debtor's only estate asset was the Residence, and Co-
30 owner owned half. It was necessary to sell the Residence to
31 complete liquidation of Debtor's estate, and Co-owner received
32 half of the net proceeds resulting from the sale. Accordingly,
33 Co-owner is considered a party in interest in the instant case.

1 While Trustee appropriately argues that the facts in Schautz
2 are similar to those in the instant case, she glosses over some
3 determinative differences between the two cases. In Schautz, the
4 co-tenant gave a quit-claim deed for her interest in the property
5 to the trustee, whereas here, Co-owner never conveyed his interest
6 in the property to the bankruptcy estate. Also, in Schautz, the
7 sale proceeds were deposited *directly* into the trustee's account
8 and then later distributed *by the trustee* to the co-owner and
9 other creditors. In this case, on the other hand, Trustee did not
10 actually disburse any money to Co-owner. Instead, half of the net
11 sale proceeds were paid to Co-owner directly from the escrow
12 account.

13 The Trustee seemingly could have tailored the Order so that
14 Co-owner's share was first deposited in her account, and then
15 distributed by her to Co-owner.⁵ If that had been the case, the
16 Co-owner's share of the sale proceeds would certainly be
17 considered "disbursed by the trustee" under Schautz.⁶ That simply
18 did not happen here.

20 ⁵Support for the proposition that Trustee *could* have
21 fashioned the Order in this manner can be found in the section of
22 the actual Order which authorized the title company to "release to
23 the Trustee fifty percent of the net proceeds generated from the
24 sale of the Foster City Property, less the Debtor's allowed
25 homestead exemption of \$75,000. (Order, p. 3). Since the Order
did authorize *some* of the sale proceeds to be paid directly to her
so that she could disburse the money to creditors, Trustee likely
could have had *all* the sale proceeds paid directly to her for her
subsequent disbursement to the co-owner, creditors, and Debtor.

26 ⁶In Southwestern Media Inc. v. Rau, 708 F.2d 419, 423-24 (9th
27 Cir. 1983), the Ninth Circuit held that a trustee does not breach
28 his fiduciary duties by structuring a sale transaction in a way
that, compared with other forms of sale, potentially increases the
maximum fee that he could be awarded.

1 Still, Trustee finds support for her position in Schautz
2 dicta. The Schautz court explained that courts liberally
3 interpret the fee statute in deciding whether to include an item
4 in the basis of compensation allowed to the trustee. Schautz, 390
5 F.2d at 799. "If the trustee handled the money, either in fact,
6 or *constructively*, courts included that amount in computing the
7 fee." Id. (Emphasis added).

8 Courts are split on whether a Trustee's constructive
9 disbursement of money to a party in interest is included in the
10 trustee's compensation base. In the case of In re Indoor-Outdoor
11 Dining, Inc., 77 B.R. 952 (Bankr. S.D. Fla. 1987), the trustee
12 handled the sale of debtor's property. The sale was closed
13 through a title company which disbursed the sale proceeds to
14 secured creditors and turned over the remaining funds to the
15 trustee for the estate. The trustee argued that the funds
16 disbursed by the title company should be equated with funds
17 disbursed by the trustee because the title company was acting as
18 an agent of the trustee. Id. at 953. The Court, in citing In re
19 New England Fish Co., 34 B.R. 899 (Bankr. W.D. Wash. 1983), stated
20 that the trustee's compensation is based on monies actually
21 administered by him, and not on assets constructively disbursed.
22 Id.

23 Alternatively, the Ninth Circuit has allowed a Trustee's fee
24 base to include constructive disbursements. See Southwestern
25 Media, 708 F.2d at 422-23. In Southwestern Media, a debtor's
26 property, which was subject to a lien, was sold to a third party
27 free and clear of liens. On the final closing day of the sale,
28 the total purchase price was collected and the lien was paid off

1 that same day. Id. at 422. The court held that the amount of the
2 lien could be included in the trustee's compensation base,
3 stating, "We see no persuasive reason why an equity sale subject
4 to an existing lien should not be considered a constructive
5 disbursement to a lien creditor." Id. at 423.

6 Citing Schautz, the Southwestern Media court further
7 explained that it "agree[d] with the Second Circuit that from a
8 policy standpoint, 'The crucial test seems to be . . . whether or
9 not the particular property or fund has been justifiably
10 administered in the bankruptcy court, or whether or not the
11 trustee has properly performed services in relation thereto.'" Southwestern Media, 708 F.2d at 424, n.4, quoting Schautz, 390
12 F.2d at 800 (in turn quoting Collier on Bankruptcy ¶ 48.07, at
13 1802 (14th ed. 1966)). Thus, while the Southwestern Media court
14 recognized constructive disbursements in the context of section
15 326(a), it also indicated that the trustee must perform services
16 in relation to the constructive disbursements before such amounts
17 could be included in the trustee's fee base.

18
19 Allowing the inclusion of constructive disbursements in a
20 trustee's fee base when the trustee performs services in relation
21 to those disbursements makes sense from a policy standpoint. The
22 sale of a jointly owned property can prove even more time
23 consuming and difficult than the sale of property held by a single
24 owner. It follows that a trustee should be able to include the
25 full sale price of a property into the maximum compensation base,
26 regardless of whether the property is individually or jointly
27 owned, so long as the trustee performed services in relation to
28 the full sale. Additionally, the safeguards precluding

1 excessively high or bad faith fees are still available. "If the
2 court were to determine that the trustee has manipulated the
3 management of the estate to inflate his fee base, rather than to
4 benefit the estate, or that the trustee's services were not
5 commensurate with the maximum fee, the court need not award the
6 maximum fee." Southwestern Media, 708 F.2d at 424.⁷

7 Here, Trustee substantially worked on every stage of the
8 sale. She entered into an agreement with the Co-owner whereby she
9 agreed to handle all selling details. She then marketed,
10 performed a site inspection on, and presided over the bidding of
11 the Residence, which was ultimately sold for \$600,000. Trustee
12 proceeded to close the sale by working with the title company and
13 helping to execute all closing documents. Finally, through the
14 title company, Trustee distributed 50% of the net proceeds from
15 the sale to the Co-owner, which amounted to \$279,508.59. Even
16 though Trustee did not actually hand over the sale proceeds to Co-
17 owner, she constructively distributed the money by actively
18 participating in the complete sale.

19 CONCLUSION

20 Following Southwestern Media, the court will permit Trustee
21 to include the full sale price of the Residence in her maximum
22 potential fee base. Trustee distributed \$279,508.59 to Co-owner
23 and \$146,026.83 to creditors, the added total of which is
24 \$425,535.42. The maximum allowed commission on that amount is
25 \$24,526.77, which is the exact amount the Trustee is requesting.

26
27 ⁷As noted in footnote 3, a trustee's fee must not only be
28 within the proscribed limits of section 326(a), it must also meet
the reasonableness requirements of section 330. In re McNar,
Inc., 120 B.R. 149, 152 (Bankr. S.D. Cal. 1990).

1 Thus, Trustee's application for compensation in the amount of
2 \$24,526.77 will be granted.

3 Trustee should submit an order awarding her the fees
4 requested, for the reasons stated in this Memorandum Decision.

5 Dated: March 12, 2001

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Dennis Montali
United States Bankruptcy Judge